

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANITA WHITE, et al.,

Plaintiffs,

vs.

EDEBITPAY, L.L.C., et al.,

Defendants.

CASE NO. 11-cv-06738-CBM  
(FFMx)

HON. CONSUELO B. MARSHALL

**ORDER AND FINAL JUDGMENT**

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On April 19, 2013, Plaintiffs Anita White and Deborah Deffenbaugh (“Plaintiffs”) filed a motion seeking certification of a settlement class and preliminary approval of a class action settlement [Docket No. 75] entered into between Plaintiffs and Defendants EDebitPay, LLC (“EDP”), Platinum Online Group LLC (“POG”), Dale Paul Cleveland, and William Richard Wilson (collectively, “Defendants”). The proposed settlement, which would resolve the claims asserted in this action on a classwide basis, is reflected in the Class Action Settlement Agreement and Release (the “Settlement Agreement”) which was submitted to the Court on April 19, 2013 [Docket No. 75-2].

1 Plaintiffs' motion for certification of a settlement class and for preliminary  
2 approval of a class action settlement came on for hearing on May 20, 2013 at 11:00  
3 a.m. before this Court. [Docket No. 79.] The Court, after considering the motion  
4 and reviewing the terms of the Settlement Agreement, found that the proposed  
5 settlement appeared sufficiently fair, reasonable, and adequate to warrant  
6 dissemination of class notice of the proposed settlement and to schedule a formal  
7 fairness hearing. [Docket No. 80.] The Court additionally found that the  
8 Settlement Agreement contained no obvious deficiencies and that the Plaintiffs and  
9 Defendants (jointly, the "Parties") entered into the proposed settlement in good  
10 faith, following arm's length negotiations between their respective counsel.  
11 [Docket No. 80.]

12 The Court granted Plaintiffs' motion for preliminary approval in an Order  
13 dated May 20, 2013 and entered on May 21, 2013 (the "Preliminary Approval  
14 Order"). [Docket No. 80.] Pursuant to the Preliminary Approval Order, the Court,  
15 among other things: (i) preliminarily certified a class of plaintiffs (the "Settlement  
16 Class") with respect to the claims asserted in this action; (ii) preliminarily  
17 approved the proposed settlement; (iii) appointed Plaintiffs as the class  
18 representatives; (v) appointed Arias Ozzello & Gignac LLP and Kronenberger  
19 Rosenfeld, LLP as counsel for the Settlement Class ("Class Counsel"); (vi)  
20 approved the form, content and dissemination of notice proposed in the Settlement  
21 Agreement; (vii) appointed KCC Class Action Services, LLC ("KCC") as  
22 settlement administrator to disseminate notice to the Settlement Class and  
23 administer the proposed settlement; (viii) ordered the dissemination of notice to the  
24 Settlement Class; and (ix) set the date and time of the final approval hearing to  
25 consider the fairness, reasonableness, and adequacy of the proposed settlement and  
26 Settlement Agreement.

27 On August 2, 2013, Plaintiffs filed their motion for final approval of class  
28 action settlement (the "Final Approval Motion"). [Docket No. 82.] Pursuant to the

1 Final Approval Motion, Plaintiffs requested final certification of the Settlement  
2 Class under Rule 23 of the Federal Rules of Civil Procedure and final approval of  
3 the proposed class action settlement.

4 On August 2, 2013, Plaintiffs filed their application for an award of  
5 attorneys' fees, reimbursement of expenses and plaintiff incentive awards (the "Fee  
6 Motion"). [Docket No. 83.] Pursuant to the Fee Motion, Plaintiffs sought an order:  
7 (i) awarding Arias Ozzello & Gignac LLP and Kronenberger Rosenfeld, LLP  
8 \$250,000 in attorneys' fees and; (ii) awarding Arias Ozzello & Gignac LLP  
9 \$7,518.70 in reasonable expenses that it had incurred during the prosecution of this  
10 action; (iii) awarding Kronenberger Rosenfeld, LLP \$4,242.15 in reasonable  
11 expenses that it had incurred during the prosecution of this action; and (iv)  
12 awarding Anita White and Deborah Deffenbaugh, as class representatives, an  
13 incentive award of \$2,500 each. [Docket No. 83.]

14 On August 9, 2013, the Federal Trade Commission ("FTC") filed a motion  
15 for leave to file a brief as *amicus curiae* (the "FTC's *Amicus Curiae* Brief").  
16 [Docket No. 84.] On August 30, 2013, Defendants filed an opposition to the  
17 FTC's *amicus curiae* brief. [Docket No. 87.] On October 6, 2013, the Court  
18 granted the FTC's motion for leave to file a brief as *amicus curiae*. [Docket No.  
19 99.] On October 8, 2013, Plaintiffs filed a response to the FTC's brief as *amicus*  
20 *curiae*. [Docket No. 103.]

21 On September 4, 2013, the Court issued a minute order requesting that Class  
22 Counsel submit the following information to assist the Court in determining  
23 whether the lodestar figure was reasonable: (i) itemized billing for all attorneys and  
24 paraprofessionals that worked on this matter, organized by date and timekeeper;  
25 (ii) evidence in support of the prevailing rate for each attorney and  
26 paraprofessional, including citations to cases of prior awards; and (iii) biographies  
27 of each attorney and paraprofessional, including how many years each professional  
28 has been practicing and how long they have been practicing within their

1 specialized practice area. [Docket No. 90.] Class Counsel submitted the  
2 information requested by the Court on September 11, 2013. [Docket Nos. 93 and  
3 94.]

4 On September 5, 2013, the Court issued a minute order continuing the  
5 hearing on the Final Approval Motion and the Fee Motion from September 9, 2013  
6 at 11:00 a.m. to September 10, 2013 at 9:00 a.m. and setting the hearing on the  
7 FTC's *Amicus Curiae* Brief for September 10, 2013 at 9:00 a.m. [Docket No. 91.]

8 On September 6, 2013, the Court, on its own motion, issued an order  
9 continuing the hearing on the Final Approval Motion, the Fee Motion and the  
10 FTC's *Amicus Curiae* Brief to October 9, 2013 at 3:30 p.m. [Docket No. 92.]

11 The Court was open and available on September 9, 2013 at 11:00 a.m. in  
12 case any members of the Settlement Class appeared for the final approval hearing  
13 that was continued. No members of the Settlement Class appeared before the  
14 Court on September 9, 2013.

15 On October 1, 2013, the FTC filed an *ex parte* application requesting that the  
16 Court vacate the October 9, 2013 hearing date and indefinitely stay this action until  
17 such time that FTC attorneys could lawfully resume their usual civil litigation  
18 functions. [Docket No. 95.] On October 3, 2013, the Court issued a minute order  
19 requesting that Plaintiffs and Defendants file a response to the FTC's *ex parte*  
20 application by no later than October 4, 2013. [Docket No. 96.] On October 3,  
21 2013, Plaintiffs and Defendants filed a joint opposition to the FTC's *ex parte*  
22 application. [Docket No. 97.] On October 6, 2013, the Court denied the FTC's *ex*  
23 *parte* application to continue the hearing on final approval until such time that FTC  
24 attorneys could lawfully resume their usual civil litigation functions, in light of the  
25 fact that the FTC had already submitted its position in its *amicus curiae* brief.  
26 [Docket No. 99.]

27 On October 8, 2013, the Parties submitted to the Court an Addendum to the  
28 Settlement Agreement (the "Addendum"). [Docket No. 101.] The Addendum does

1 not alter any of the terms of the Settlement Agreement. [Docket No. 101.]  
2 Instead, the Addendum clarifies and commemorates that Defendants will not use  
3 the consumer contact information of Settlement Class members in the future.  
4 [Docket No. 101.] Specifically, the Addendum provides in relevant part:  
5 “Defendants hereby confirm that Defendants had never intended to use, and in fact  
6 shall not use, any consumer contact information associated with the Settlement  
7 Class Members regarding the three Membership Programs (i.e., the Saving Pays  
8 Membership, Century Platinum Membership, and USA Credit Membership) for  
9 any purpose whatsoever, except as is necessary to comply with a court order or  
10 government subpoena.” [Docket No. 101.]

11 As set forth in the October 8, 2013 declaration of Jonathan D. Carameros, a  
12 total of 1,715 timely unique claims were submitted by members of the Settlement  
13 Class [Docket No. 100, at ¶ 6], no requests for exclusions were submitted by  
14 members of the Settlement Class [Docket No. 100, at ¶ 7], and no objections were  
15 submitted by members of the Settlement Class [Docket No. 100, at ¶ 8].

16 On October 9, 2013, a hearing pursuant to Fed. R. Civ. P. 23(e) was held  
17 before this Court for the following purposes:

18 a. to determine whether the Settlement Class satisfies the  
19 applicable prerequisites for certification for settlement purposes under Fed. R. Civ.  
20 P. 23(a) and (b);

21 b. to determine whether the proposed settlement as reflected in the  
22 Settlement Agreement [found at Docket No. 75-2] and as clarified by the  
23 Addendum [found at Docket No. 101], is fair, reasonable, and adequate, and  
24 should be finally approved by the Court;

25 c. to determine whether a final judgment as provided under  
26 Section X of the Settlement Agreement should be entered, and to determine  
27 whether the release by the Class, as set forth in Paragraph 3 of Section X of the  
28 Settlement Agreement, should be provided;

1           d.     to consider Plaintiffs' application for an award of attorneys'  
2 fees, reimbursement of expenses and plaintiff incentive awards [Docket No. 83];  
3 and

4           e.     to rule upon such other matters as the Court may deem  
5 appropriate.

6           The Court having heard arguments on behalf of the Parties and having  
7 reviewed and considered the Settlement Agreement, the Addendum, the Final  
8 Approval Motion, the Fee Motion, the FTC's *Amicus Curiae* Brief, all of the  
9 submissions presented with respect to the proposed settlement, and the record in  
10 this action, does hereby:

11           **ORDER, ADJUDGE, AND DECREE THAT:**

12           1.     The Court, for purposes of this Order and Final Judgment ("Final  
13 Judgment") adopts the capitalized terms and their definitions set forth in the  
14 Settlement Agreement, as executed by the Parties and filed with the Court on April  
15 19, 2013. [Docket No. 75-2].

16           2.     The Court has personal jurisdiction over the Plaintiffs and all  
17 members of the Settlement Class and the Court has subject matter jurisdiction to  
18 approve the proposed settlement, the Settlement Agreement (including all exhibits  
19 thereto), and the Addendum.

20           3.     The Court finds that the prerequisites of Rule 23(a) and Rule 23(b)(3)  
21 of the Federal Rules of Civil Procedure have been satisfied in that: (i) the number  
22 of members of the Settlement Class is so numerous that joinder of all members is  
23 impracticable; (ii) there are questions of law and fact common to the Settlement  
24 Class; (iii) the claims of the Plaintiffs are typical of the claims of the Settlement  
25 Class; (iv) the Plaintiffs have represented, and will fairly and adequately represent,  
26 the interests of the Settlement Class; (v) questions of law and fact common to the  
27 Settlement Class predominate over any questions affecting only individual  
28 members of the Settlement Class; and (vi) a class action is superior to other



1 available methods for the fair and efficient adjudication of the controversy.

2 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this  
3 action is hereby certified, for settlement purposes only, as a class action on behalf  
4 of the following Settlement Class with respect to the claims asserted in this action:

5 All individuals from whom Defendants collected  
6 Membership Fees or who incurred Bank Account Fees in  
7 connection with a collection or attempted collection of  
8 Membership Fees from June 20, 2007 to May 21, 2013.

9 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
10 hereby finally certifies plaintiffs Anita White and Deborah Deffenbaugh  
11 (“Plaintiffs”) as the representatives of the Settlement Class.

12 6. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, the  
13 Court hereby appoints Arias Ozzello & Gignac LLP and Kronenberger Rosenfeld,  
14 LLP as counsel to the Settlement Class (“Class Counsel”).

15 7. The Court finds that Class Counsel and Plaintiffs adequately  
16 represented the Settlement Class for purposes of entering into and implementing  
17 the proposed settlement, the Settlement Agreement and the Addendum.

18 8. As confirmed in the August 2, 2013 declaration of Jonathan D.  
19 Carameros [Docket No. 82-3], the Claims Administrator has complied with the  
20 notice process set-forth and approved by the Court in its Preliminary Approval  
21 Order. The Court finds that the form and method for notifying the Settlement  
22 Class members of the proposed settlement and its terms and conditions was in  
23 conformity with this Court’s Preliminary Approval Order.

24 9. The Court further finds that the form and method for notifying the  
25 Settlement Class members of the proposed settlement and its terms and conditions  
26 satisfied the requirements of Rule 23(c)(2)(B) and Rule 23(e)(1) of the Federal  
27 Rules of Civil Procedure and due process, and constituted the best notice  
28 practicable under the circumstances. The Court finds that the notice process was

1 designed to clearly and fully advise the Settlement Class members of their rights  
2 and constituted due and sufficient notice to all persons and entities entitled thereto.  
3 Further, the Court finds that the claims process set forth in the Settlement  
4 Agreement was followed and that the process was the best practicable procedure  
5 under the circumstances.

6 10. The Court hereby finds that no request for exclusions or “opt-outs”  
7 have been submitted by any member of the Settlement Class and further finds that  
8 no objections to the proposed settlement have been submitted by any member of  
9 the Settlement Class.

10 11. The Court hereby finds that the Settlement Agreement and Addendum  
11 were entered into in good faith and that Plaintiffs have satisfied the standards and  
12 applicable requirements for final approval of the proposed settlement under the  
13 Federal Rules of Civil Procedure, including Rule 23(e).

14 12. The Court hereby grants final approval of the Settlement Agreement,  
15 the Addendum and the settlement described therein. The Settlement Agreement,  
16 the Addendum and the proposed settlement are, in all respects, fair, reasonable,  
17 and adequate, in the best interests of the Settlement Class, and in compliance with  
18 all requirements of due process and applicable law.

19 13. The Court directs that the settlement be consummated in accordance  
20 with the terms and conditions of the Settlement Agreement and the Addendum,  
21 except that the \$60 Cash Payment set forth in Paragraph 1 of Section III of the  
22 Settlement Agreement is increased to \$99. The Court finds that this modification  
23 of the proposed settlement, which is made pursuant to the Parties’ joint request, is  
24 permitted and warranted without the need to provide further notice to the  
25 Settlement Class or further notice to the United States Attorney General and the  
26 attorney general of each state pursuant to 28 U.S.C. § 1715 of the Class Action  
27 Fairness Act of 2005 because: (i) most claims which are at issue in this action stem  
28 from the imposition or attempted imposition of a \$99 “membership fee”; (ii)



Paragraph 1 of Section III of the Settlement Agreement provides and advises class members that “the precise Cash Payment shall depend on the claims rate”; (iii) the total number of timely, unique claims submitted in this action are such that the Settlement Fund is sufficient to permit each of the 1,715 claimants to receive \$99.

14. The Court hereby orders that any unclaimed funds from the Settlement Fund after all Settlement Costs and Cash Payments are paid shall be distributed in a cy pres distribution to the National Consumer League, such that the entire Settlement Fund shall be distributed following this final approval of the settlement after the Effective Date.

15. By no later than 7 days after the Effective Date, Defendants’ insurer shall make a single payment of \$1,000,000.00 to an account created by the Settlement Administrator.

16. Upon entry of this Order, compensation to the Settlement Class Members who submitted timely and valid claims shall be affected pursuant to the terms of the Settlement Agreement.

17. Class Counsel are hereby awarded \$250,000.00 in attorneys’ fees, which sum the Court finds to be fair and reasonable, and \$11,760.85 in reimbursement of expenses. The Court specifically finds that these fees and costs are reasonable in light of the benefit provided to the Settlement Class under the settlement. This award and the reimbursement of expenses shall be paid from the Settlement Fund by the Settlement Administrator no later than 7 business days after the Effective Date.

18. In addition to any recovery that the Plaintiffs may receive under the settlement and in recognition of the Plaintiffs’ efforts on behalf of the Settlement Class, Plaintiffs Anita White and Deborah Deffenbaugh are hereby awarded \$2,500.00 each as an incentive award directly related to Plaintiffs’ representation of the Settlement Class. This award shall be paid to Plaintiffs by the Settlement Administrator from the Settlement Fund via checks made out to “Anita White” and

1 “Deborah Deffenbaugh” delivered to Class Counsel no later than 7 business days  
2 after the Effective Date.

3 19. The Court determines that the Settlement Agreement and the  
4 settlement provided for herein and any proceedings taken pursuant thereto are not  
5 and should not in any event be offered or received as evidence of, a presumption,  
6 concession, or an admission of liability or of any misrepresentation or omission in  
7 any statement or written document approved or made by Defendants or any  
8 Releasee or the suitability of these or similar claims to class treatment in active  
9 litigation and trial; provided, however, that reference may be made to this  
10 Settlement Agreement and the settlement provided for herein in such proceedings  
11 as may be necessary to effectuate this Agreement.

12 20. To the extent permitted by law and without affecting the other  
13 provisions of this Final Judgment, this Final Judgment is intended by the Parties  
14 and the Court as binding on and having *res judicata* and preclusive effect in all  
15 pending and future lawsuits or other proceedings encompassed by the Release (as  
16 set forth in Paragraph 29 of Section I of the Settlement Agreement) maintained by  
17 or on behalf of Plaintiffs and all other members of the Settlement Class, as well as  
18 their agents, heirs, executors or administrators, successors and assigns.

19 21. The Court finds that Plaintiffs and the Settlement Class (whether or  
20 not they submitted a timely and valid claim) have conclusively compromised,  
21 settled, dismissed, and released any and all Released Claims against Defendants  
22 and the Releasees. Accordingly, on the Effective Date, Plaintiffs and all members  
23 of the Settlement Class, shall be barred from asserting any Released Claims against  
24 Defendants and/or any Releasee.

25 22. The Court bars and permanently enjoins all members of the  
26 Settlement Class from: (i) filing, commencing, prosecuting, intervening in or  
27 participating as a plaintiff, claimant or class member in any other lawsuit or  
28 administrative, regulatory, arbitration or other proceeding against Defendants in

1 any jurisdiction based on, relating to or arising out of the claims and causes of  
2 action or the facts and circumstances giving rise to the Lawsuits, the Consolidated  
3 Action and/or the Released Claims; (ii) from filing, commencing or prosecuting a  
4 lawsuit or administrative, regulatory, arbitration or other proceeding against  
5 Defendants as a class action on behalf of any Settlement Class Members who have  
6 not timely excluded themselves (including by seeking to amend a pending  
7 complaint to include class allegations or seeking class certification in a pending  
8 action), based on, relating to, or arising out of the claims and causes of action or  
9 the facts and circumstances giving rise to the Lawsuits, the Consolidated Action  
10 and/or the Released Claims; and (iii) from organizing Settlement Class Members  
11 who have not been excluded from the class into a separate class for purposes of  
12 pursuing as a purported class action any lawsuit or arbitration or other proceeding  
13 (including by seeking to amend a pending complaint to include class allegations or  
14 seeking class certification in a pending action) against Defendants based on,  
15 relating to, or arising out of the claims and causes of action or the facts and  
16 circumstances giving rise to the Lawsuits, the Consolidated Action, and/or the  
17 Released Claims.

18 23. The Court hereby dismisses the "Doe" defendants with prejudice.

19 24. The Lawsuits and the Consolidation Action (including all individual  
20 and class claims presented thereby) shall be and are hereby dismissed with  
21 prejudice on the merits and in full and final discharge of any and all such claims,  
22 without fees or costs except as specifically provided herein.

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2 25. This Order is intended to be a final judgment disposing of the above  
3 captioned action in its entirety, including the Lawsuits and the Consolidated  
4 Action.

5 26. This Court retains jurisdiction over the parties and the Settlement  
6 Class Members for all matters relating to this action, including the administration,  
7 interpretation, effectuation or enforcement of the Settlement Agreement, the  
8 Addendum and this Order and Final Judgment.

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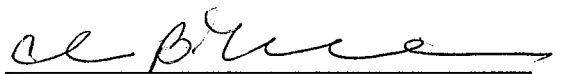
10 **IT IS SO ORDERED.**

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12 Dated: 12/3/2013

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By:   
The Honorable Consuelo B. Marshall  
United States District Court Judge

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*C.B. FISCAL*

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